THE HAY-PAUNCEFOTE TREATY.

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It is the misfortune of the Hay-Pauncefote treaty that it does not carry its justification on its face. It is a product of history and not a special creation of the reason. Considered superficially, it seems to sacrifice important American interests. Considered in the light of its historical origins, it is clearly a triumph for American diplomacy. It cannot be fairly judged by one unacquainted with the history of the Clayton-Bulwer treaty of 1850, or of the Constantinople treaty of 1888, upon which it is, in part, based. One of the primary objects of the pending treaty is, to remove the serious obstacle to the construction of a canal by our government presented by the Clayton-Bulwer treaty. It has been, too hastily, assumed in many quarters that the pending treaty is the only honorable escape from the Clayton-Bulwer treaty, and that therein lies its sole justification. Indeed, the treaty is in grave danger of being killed by its friends. The apologists of the administration are unwisely urging the ratification of the treaty on the ground of necessity, rather than of national self-interest. We are gravely assured that it is not a question of national advantage, not a question of expediency, but a question of treaty obligation. We are told, in effect, that the Clayton-Bulwer treaty is not voidable, and that, consequently, we must accept the pending treaty, not because the policy of neutralization which it embodies is desirable in itself, but because that is the only policy which England, standing on the Clayton-Bulwer treaty, will permit us to pursue.

The Clayton-Bulwer treaty of 1850 between the United States and Great Britain prohibits either Power from extending its dominion over any portion of Central America, or from exercising exclusive control over any canal across the American isthmus; and provides that the two Powers "shall extend their protection,

by treaty stipulations," to any such canal. Every line of this treaty has reference to a canal constructed by private enterprise, and, by necessary implication, prohibits the construction of a canal by either the signatory Powers as a national enterprise. This construction of the treaty is confirmed by the negotiations which preceded its execution. The intervening years have proved conclusively that the canal cannot be constructed by private enterprise. We have waited half a century for such a canal to come into existence. Does the sanctity of treaty obligations demand that we shall wait indefinitely? The treaty has no reference to existing conditions, and there is no prospect of its becoming operative within a reasonable time by the construction of a canal to which it would be applicable. The object of the treaty was to facilitate the construction of a canal, while existing conditions are such that the practical effect of the treaty is to prevent the accomplishment of that object. The contention that we can not honorably terminate a treaty which, if allowed to remain operative, would indefinitely bar the construction of a canal demanded by our interests and the commerce of the world, is grostesquely absurd. The sanctity of treaty obligations demands no such sacrifice. Again and again, during the present century, the Powers of Europe have disregarded treaties on the ground of a material change of circumstances. International morality demands that a treaty should not be lightly set aside; but the enlightened opinion of the world recognizes that treaty stipulations should not be permitted to restrict the free play of national development, nor to check the progress of civilization. But while we should be justified by European precedents in notifying Great Britain that we should no longer consider ourselves bound by the treaty, it would be unwise to do so, because some of its provisions are still advantageous to this country. It is the high merit of the pending treaty that, while it secures our exclusive control of the canal, it preserves so much of the old treaty as prohibits either Power from extending its dominion over any portion of Central America.

The Clayton Bulwer treaty is not the only one standing in the way of our acquiring exclusive military control of the canal. The treaty between Spain and Nicaragua, of July 25th, 1850, provides that "the Spanish flag and merchandise, as well as the subjects of Her Catholic Majesty, shall enjoy on the transit the same advantages and exemptions as are granted to the most favored na-

tions;" and, on the other hand, Spain agrees to guarantee the neutrality of the canal and "to keep the transit thereby free, and protect it against all embargo or confiscation." In the treaty between France and Nicaragua, ratified on January 10th, 1860, it is stipulated that "the Republic of Nicaragua binds itself to grant France and French subjects the same rights and privileges in every respect, as to transit and the price of transit, as well as all other rights, privileges or advantages whatsoever relatively to the passage or employment of troops, or relatively to any object whatever, which are to-day or may be hereafter granted or given to be enjoyed by the most favored nation;" while France on her part agrees to protect the neutrality of the canal. The treaty between Spain and Costa Rica, of May 10th, 1850, gives to the Spanish flag and merchandise "free transit" upon any canal through the territory of Costa Rica, on the same terms as "the vessels, merchandise and citizens" of Costa Rica. The treaty between Italy and Nicaragua, of March 6th, 1868, insures to Italy the same rights in the canal as the most favored nation. In the treaty of June 21st, 1867, between the United States and Nicaragua, is found the following provision:

"The United States hereby agree to extend their protection to all such routes of communication as aforesaid, and to guarantee the neutrality and innocent use of the same. They also agree to employ their influence with other nations to induce them to guarantee such neutrality and protection."

This treaty is still in force. In the treaty of February 11th, 1860, between Great Britain and Nicaragua, is found an identical provision for a British guarantee.

While they are by no means unvoidable, these treaties cannot be ignored by our government; and their existence constitutes a strong reason for the ratification of the pending treaty, with which they harmonize. In their report on the pending treaty, the Senate Committee on Foreign Relations says:

"It is not what remains of the Clayton-Bulwer treaty which makes this convention necessary, so much as the identical treaties of the United States and Great Britain with Nicaragua in pursuance of the Clayton-Bulwer treaty, which were concluded in 1860 and 1867."

The Committee seems to have been strangely ignorant of the fact that this treaty of 1860 between Great Britain and Nicaragua expired on June 11th, 1888, on notice given by Nicaragua in conformity with its terms. The Hay-Pauncefote treaty is not

"necessary" for any reason. Existing treaties, instead of making the pending treaty necessary, afford only one of many reasons for adopting the policy of neutralization. If we reject neutralization and adopt the policy of fortification, we must first address ourselves, if we select the Nicaragua route, to the not impossible task of removing the diplomatic obstacles presented by these treaties. Assuming the consent of the local government, there is no insuperable obstacle to our military control of the canal. It is purely a question of expediency. Respecting inter-oceanic canals, international law is silent. No one questions the absolute control of Great Britain over the Crinan and Caledonian Canals, or of Germany over the Kaiser Wilhelm and Elbe-Trave Canals, or of Greece over the Corinthian Canal. If we should construct a canal in territory over which we had first acquired unqualified sovereignty, our right to control it would be equally absolute.

It is frequently urged that the neutralization of the Suez Canal constitutes a precedent, which we are morally, if not legally, bound to follow by ratifying the pending treaty. This contention is unsound, because of the radically different character of the two canals. We should ratify our canal, if at all, solely as a matter of self-interest, and not out of deference to a European precedent of remote relevancy. From the very first, the Suez Canal was clothed with an international character, and the original concession contemplated a neutral canal. It is a private enterprise, conducted by foreigners of various nationalities, in territory subject to international control, and under a concession from a government too weak to afford adequate protection, and itself subject to international supervision. Its shareholders and bondholders are found in every country of Europe; and, while its management is predominantly French, its largest stockholder is the British government. On the other hand, the American canal will be exclusively national in character. It will be a purely governmental enterprise, conducted by one of the great Powers in territory over which it will exercise exclusive jurisdiction. It will have no international character, save such as may be imposed upon it by the voluntary action of our government.

Egypt is the land of political fictions. Technically, the Khedive is the well-nigh absolute ruler of Egypt, under the suzerainty of the Sultan. In reality, the authority of the Khedive is only nominal, while the actual powers of government are exer-

cised by England. Above the Sultan, above the Khedive and the British government, is the Concert of Europe, exercising an ultimate supervision. The situation is still further complicated by the fact that all the civilized powers enjoy in Egypt the right of exterritoriality. Ever since 1839-1841, when the European Powers intervened to check the victorious career of Mehemet Ali, Egyptian affairs have been subject to international control. Each successive British government has acknowledged that the sanction of the Concert of Europe was essential to any important political action it might wish to take in Egypt. This complex international status of Egypt gave to the Suez Canal a corresponding international status, which rendered impossible any exclusive control by either France or Great Britain. Many times before its neutralization in 1888, it was treated as a subject of international control. In 1871, the European Powers united in abortive negotiations for the purchase of the Canal and for its management by an international commission. In 1872, Lord Granville laid down the principle that the Canal Company could not be allowed to be the judges of their own concession. In 1873, the European Powers joined in a demand for a revision of the rules to determine the tonnage of vessels passing through the Canal. In 1875, England purchased the private shares of the Khedive. At once, the other Powers asked for explanations and were formally assured that England had no exclusive designs, and that she recognized fully that important affairs of the Canal came under the cognizance of the Powers. In 1877 occurred the war between Russia and Turkey. On May 6th, 1877, Lord Derby wrote to the Russian Ambassador as follows:

"Should the war now in progress unfortunately spread, interests may be imperilled which they (Her Majesty's Government) are equally bound and determined to defend, and it is desirable that they should make it clear, as far as at the outset of the war can be done, what the most prominent of those interests are. Foremost among them, is the necessity of keeping open, uninjured and uninterrupted, the communication between Europe and the East by the Suez Canal. An attempt to blockade or otherwise to interfere with the Canal or its approaches would be regarded by them as a menace to India and as a grave injury to the commerce of the world. On both these grounds any such step—which they hope and fully believe there is no intention on the part of either belligerent to take—would be inconsistent with the maintenance by them of passive neutrality."

Prince Gortchakoff replied, on May 18th, 1877:

"The Imperial Cabinet will neither blockade, nor interrupt, nor in any way menace the navigation of the Suez Canal. They consider the Canal as an international work, in which the commerce of the world is interested, and which should be kept free from any attack."

The Arabi rebellion gave Europe a sharp reminder of the insufficiency of a merely Egyptian guarantee of the neutrality of the Canal, and did even more than the Turko-Russian war to hasten an international neutralization. In 1882, England intervened to suppress the rebellion. Her warships and transports entered the Canal and used it as a base. The intervention was undertaken at the request of the Khedive, and had the approval of all the Powers save France. Mr. Gladstone was very explicit in acknowledging the right of the Powers to a voice in the matter. England took the position that she was simply performing an international police duty, which naturally rested upon her by reason of her predominant interest in the Canal. She did not act alone, however, until France had timidly declined to coöperate.

On July 23d, 1883, in a speech in the House of Commons, announcing the withdrawal of a scheme to parallel the Suez Canal, Mr. Gladstone said:

"I wish to announce that we cannot undertake to do any act inconsistent with the acknowledgment, indubitable and sacred in our eyes, that the Canal has been made for the benefit of all nations at large, and that the rights connected with it are matters of common European interest."

As a result of the British occupation of Egypt, there developed among the Continental Powers, and especially in France, a strong sentiment in favor of the neutralization of the Canal. It was felt that neutralization was the only means of preventing the Canal from falling under the exclusive control of Great Britain. England saw that some form of neutralization was inevitable; and, in order that the form finally adopted might fetter her future action in Egypt as little as possible, she took the lead in the negotiations. Accordingly, on January 3d, 1883, Lord Granville sent a circular dispatch to the British Ambassadors at Paris, Berlin, Vienna, Rome and St. Petersburg, outlining a scheme of neutralization. The following are the material passages:

"One result of recent occurrences has been to call special attention to the Suez Canal; firstly, on account of the danger with which it was threatened during the first brief success of the insurrection; secondly, in consequence of its occupation by the British forces in the name of the Khedive, and their use of it as a base of the operations carried on

in His Highness' behalf, and in support of his authority; and, thirdly, because of the attitude assumed by the Direction and officers of the Canal Company at a critical period of the campaign.

"As regards the first two of these points, Her Majesty's Government believe that the free and unimpeded navigation of the Canal at all times, and its freedom from obstruction or damage by acts of war, are matters of importance to all nations. It has been generally admitted that the measures taken by them for protecting the navigation and the use of the Canal on behalf of the territorial Ruler, for the purpose of restoring his authority, were in no way infringements of this general principle.

"But to put upon a clearer footing the position of the Canal for the future, and to provide against possible dangers, they are of opinion that an agreement to the following effect might with advantage be come to between the Great Powers, to which other nations would subsequently be invited to accede:—

"1. That the Canal should be free for the passage of all ships, in any circumstances.

"2. That in time of war a limitation of time as to ships of war of a belligerent remaining in the Canal should be fixed, and no troops or munitions of war should be disembarked in the Canal.

"3. That no hostilities should take place in the Canal or its approaches, or elsewhere in the territorial waters of Egypt, even in the event of Turkey being one of the belligerents.

"4. That neither of the two immediately foregoing conditions shall apply to measures which may be necessary for the defence of Egypt.

"5. That any Power whose vessels of war happen to do any damage to the Canal should be bound to bear the cost of its immediate repair.

"6. That Egypt should take all measures within its power to enforce the conditions imposed on the transit of belligerent vessels through the Canal in time of war.

"7. That no fortifications should be erected on the Canal or in its vicinity.

"8. That nothing in the agreement shall be deemed to abridge or affect the territorial rights of the Government of Egypt further than is therein expressly provided."

This scheme was not acceptable to France; and much time was consumed in an unsuccessful attempt to frame a convention acceptable to both France and England. Finally, it was decided to refer the whole matter to a commission. On March 17th, 1885, the Plenipotentiaries of Great Britain, Germany, Austria-Hungary, France, Italy, Russia and Turkey signed at London a Declaration, of which the following is a passage:

"Whereas the Powers have agreed to recognize the urgent necessity for negotiating with the object of sanctioning, by a Conventional Act, the establishment of a definitive regulation destined to guarantee at all times, and for all Powers, the freedom of the Suez Canal: It has been agreed between the seven Governments above named that a Commission composed of Delegates named by the said Governments shall meet at Paris on the 30th March, to prepare and draw up this Act,

taking for its basis the Circular of the Government of Her Britannic Majesty of the 3rd January, 1883. A Delegate of His Highness the Khedive shall sit on the Commission, with a consultative voice."

In conformity with this Declaration, the Suez Canal Commission convened at Paris on March 30th, 1885. Although an agreement upon many important points was soon reached, it was found impossible to reconcile radical differences of opinion respecting the area to be neutralized, the defense of Egypt and the mode of enforcing the agreement. The last meeting was held on June 13th, 1885. During the remainder of the year, events in Eastern Roumelia absorbed the attention of Europe. On January 6th, 1886, the French Ambassador at London informed Lord Salisbury that France had consulted the other Powers with a view to the resumption of negotiations, and that they had all expressed a willingness to concur in any solution of the questions remaining unsettled that might be acceptable to both France and England. Protracted negotiations between the two governments followed, the points of difference being few but radical. As to the area to be neutralized, France wished to prohibit all acts of war and "all acts directed immediately to the preparation of an operation of war" not only in the Canal itself and its ports of access, but also in its approaches and the territorial waters of Egypt. England objected to the inclusion of the approaches of the Canal and the territorial waters of Egypt, and urged that to forbid "all acts directed immediately to the preparation of an operation of war" would unjustly prevent preparations for the defence of Egypt. In thus seeking to restrict, so far as possible, the area to be neutralized, England was not actuated solely by a disinterested regard for Egypt, but was wisely seeking to safeguard her own future interests. She foresaw that her occupation of Egypt might be permanent, and, consequently, wished to keep as much territory as possible free from the neutralization, in order that it might, in the future, be utilized by her as a military base. On the other hand, France sought to neutralize so much of Egypt that England would have no motive for making her occupation permanent. The treaty shows that England carried her point. As regards the right to embark and disembark troops and munitions of war in the Canal, France wished the treaty to read: "Vessels shall not disembark or embark troops, munitions or materials of war in the Canal and its ports of access." England contended that the

prohibition should be limited to time of war and to active belligerents, that it should apply only to the Canal, and should not extend to the ports of access. Her object was to reserve the right to embark troops for the defence of India prior to a declaration of war, and disembark them in case of a temporary blockade of the Canal. France was intent on preventing England from gaining any military advantage from her occupation of Egypt. England succeeded in restricting the prohibition to time of war, and in making provision for a temporary blockade of the Canal. Throughout the negotiations, England was strongly opposed to a thoroughgoing neutralization of the Canal, that is, to a joint guarantee of its neutrality. Lord Granville cautioned the Delegates to the Canal Commission to avoid the use of the term "neutrality" in connection with the Canal, and instructed them to adhere to the term "freedom" or "free navigation," as used in the circular dispatch of 1883. The Delegates replied:

> "There is no ground to apprehend any inconvenience from the use which may have occasionally been made by the Delegates of the word 'neutrality,' inasmuch as there has been a common accord from the first that the term, as applied to the Canal, had reference only to the neutrality which attaches by international law to the territorial waters of a neutral state, in which a right of innocent passage for belligerent vessels exists, but no right to commit any act of hostility."

The language aptly describes the Constantinople treaty. The Powers agreed to treat the Canal as neutral; they did not agree to guarantee its neutrality. An agreement between France and England was finally reached and a draft treaty signed by M. Flourens and Mr. Egerton at Paris, on October 24th, 1887. The definitive treaty, which included certain amendments suggested by the Sultan, was signed at Constantinople on October 29th, 1888, by the representatives of Great Britain, France, Russia, Holland, Italy, Germany, Spain, Austria and Turkey.

It was the fault of England that a more effective form of neutralization was not adopted. If she could have had her way, there would have been no agreement whatever, for she was content with the practical control of the Canal which she enjoyed by virtue of her superior fleet and her position in Egypt, Gibraltar, Malta, Perim and Aden. The treaty was a futile attempt to reconcile irreconcilable interests. The Egyptian question and the Canal question were so related that no satisfactory solution of the latter was possible. England went into Egypt in 1882 to protect

the Canal; she remains there to control it; and, so long as she remains, it is idle to talk of its neutralization.

As Mr. Curzon pointed out in the House of Commons, on July 12th, 1898, the treaty of Constantinople has never become practically operative, owing to the following important reservation originally made by Sir Julian Pauncefote on June 13th, 1885, at the last meeting of the Suez Canal Commission; repeated by Lord Salisbury, on October 21st, 1887, only three days before the treaty was signed on behalf of Great Britain and France, and carefully brought to the attention of all the Powers concerned when the acceptance of the treaty was recommended by the British government:

"The Delegates of Great Britain, in presenting this text of the treaty as the definitive system destined to guarantee the free use of the Suez Canal, consider it their duty to formulate a general reservation as to the application of its provisions in so far as they would not be compatible with the present transitory and exceptional state of Egypt, and might fetter the liberty of action of their Government during the occupation of Egypt by the forces of Her Britannic Majesty."

Furthermore, the treaty was executed with the understanding that England's occupation of Egypt should be temporary; and it was expressly provided in Article XII. that none of the signatory Powers should acquire any territorial advantages with respect to the Canal. The retention of Egypt by England, in violation of this understanding and express stipulation, renders the present status of the Suez Canal very uncertain; and this uncertainty will continue until there is a final solution of the Egyptian question. Even if the treaty of Constantinople were now in force, it would be of slight practical value because it does not cover the Red Sea and its approaches. All of the Delegates to the Suez Canal Commission of 1885 were agreed that the relation of the Red Sea and the Canal was such that both should be included in an act of neutralization to make it practically effective, and yet England peremptorily refused even to discuss a proposal of Russia looking to that end. England has always been a consistent and resolute enemy of an effective neutralization of the Suez Canal and its approaches. Doubtless, she has acted wisely for her own interests, but she has certainly estopped herself from urging us to neutralize our canal as a matter of international comity.

The Hay-Pauncefote treaty provides "that there shall be no discrimination against any nation or its citizens or subjects in

respect of the conditions or charges of traffic, or otherwise." This is our historic policy, never departed from except in the ill-advised Frelinghuysen-Zavala treaty of 1884, which President Cleveland had the wisdom and courage to withdraw from the Senate. Such a policy would inevitably lead to retaliatory discriminations against us in every part of the world, and thereby defeat its own object. It would also render probable the construction of a second canal. A guarantee of equality of tolls is, of course, a condition precedent to an international neutralization of the canal; for no self-respecting nation would agree not to attack a canal in which it was liable to discrimination. Even Secretary Blaine saw the futility and inexpediency of a policy of discrimination. He assured Lord Granville that the United States sought no narrow or exclusive commercial advantage, and that "the same rights and privileges, the same tolls and obligations for the use of the canal, shall apply with absolute impartiality to the merchant marine of every nation on the globe."

Much confusion of thought has arisen from the different senses in which the term neutralization is used. The practice of neutralizing objects is of modern growth, and it is, therefore, not surprising that international law does not afford an exact and unvarying definition. Indeed, the term is generic in its nature, and consequently no definition can be very illuminating. In its generic sense, neutralization is an international act, whereby an object is clothed with the attributes of permanent neutrality. A neutralized state is one which has entered into an agreement with the great Powers not to engage in war save for the defense of its own territory, receiving, by way of compensation, a guarantee from such Powers to respect its territory and protect it if attacked by others. Thus, Switzerland was neutralized in 1815, Belgium in 1830, and Luxemburg in 1867. Neutralized persons and things are such as have been exempted by international agreement from hostile attack. Thus, the wounded in battle, military doctors, nurses, ambulances and hospitals were neutralized by the Geneva Convention of 1864. Theoretically, an object cannot be neutralized unless all the Powers unite in the neutralization. Practically, it is sufficient if all the great Powers unite, or all the Powers directly affected. Neutralization is a matter of voluntary agreement. We cannot neutralize our canal without entering into an agreement with the European Powers, nor can we arbitrarily dic-

tate the terms of the agreement. We may, if we choose, build and fortify the canal as a purely American enterprise, and defend it against the world as we do our other property. The European Powers would have no right to object under the rules of international law. But the canal would be no more exempt from attack than any other American property, for there is no rule of international law exempting inter-oceanic canals from attack, although unfortified. Neutralization is not a product of international law, but of special international agreement. If we had an army and a navy superior to the combined armies and navies of the rest of the world, we could not alone neutralize the canal, although we could protect it and thereby effect the same result. It is important to remember that neutralization and protection are not the same thing, although they may, conceivably, have the same effect. Neutralization changes the legal relations of sovereign states to one another, and to the object neutralized, in that they cannot exercise belligerent action, where they would otherwise be free to do so, without rendering themselves liable to punishment at the hands of neutrals. The rights and obligations of sovereign States cannot be thus radically changed without their free consent. The United States and Great Britain could not alone neutralize the canal; and hence the Hay-Pauncefote treaty provides for the adherence of all the Powers.

A canal may be neutralized either by excluding the warships of all belligerents or by allowing them free passage indiscriminately. In this scheme for the neutralization of the canal, Secretary Blaine adopted the former policy as respects all foreign warships. In all our existing treaties regarding the canal, provision is made for the free passage of belligerent vessels without discrimination. This policy has so many advantages that Secretary Hay was wise in adopting it as the basis of the pending treaty. The primary function of an inter-oceanic canal is to afford a speedy and uninterrupted passage for vessels of every description. Any exclusions that might be made would not only be vexatious in themselves, but would involve the exercise of an arbitrary power incompatible with a state of neutrality. Furthermore, the tolls to be derived from belligerent vessels are enormous, and a canal is primarily a business enterprise. The chief objection, however, to the exclusion of belligerent vessels lies in the practical difficulty of determining the existence of a state of

war. No declaration of war is necessary, and acts of hostility are not conclusive evidence. Sometimes a government intentionally refrains from publishing its intention. During 1884-1885, France carried on warlike operations against China while refusing to admit the existence of a state of war. The determination of this question with reference to the free passage of the canal would necessarily have to be made by our government quickly, and often upon indefinite or conflicting information.

The neutralization of the canal would be of advantage to this country for a number of reasons.

(1.) It would relieve our government of the burden of protecting the canal from attack and blockade. Remote from our shores and peculiarly vulnerable, the canal would be our weakest point in time of war. It could not be defended by fortifications alone. We should need a larger fleet than the combined fleets of our enemies. The control of one of the *foci* of the world's commerce would be so incalculably important that our enemies would surely make the canal their first and main object of attack. No European Power would ever hope to subjugate the American people, but it might reasonably hope to seize and hold the canal.

(2.) It would save the American people many millions of dollars each year, which would otherwise necessarily be spent in constructing and maintaining a navy sufficiently strong to protect the canal at all hazards. It would likewise do away with the enormous expense of constructing and maintaining fortifications.

(3.) It would leave our fleet free to operate nearer its bases and to choose freely its positions for attack or defense.

(4.) It would free neutral commerce from vexatious interference in time of war.

(5.) It would lessen the chances of intervention in any war to which we might be a party.

(6.) It would confirm our control in perpetuity. If we reject neutralization, we assume, single-handed, the duty of keeping the canal open at all times. This duty would be absolute, and the penalty for its non-performance would be an international control of the canal, deeply humiliating to our national pride.

(7.) It would avoid the loss of tolls resulting from a diversion of shipping in case of a war or rumor of war with us.

(8.) It would prevent the construction of a competing canal. A fortified canal through Nicaragua with tolls discriminating in

favor of our citizens—fortification and discrimination are twin policies advocated by the same class of men—would almost certainly lead France and the other great commercial nations to complete the Panama Canal in self-defense. This would render our exclusive military control of the Nicaragua Canal valueless. We could not charge discriminating tolls, for that would drive business to the competing canal. Neither could we prevent our enemies from sending their warships through the isthmus. Then, too, a second canal would place us at a serious strategic disadvantage, in that our canal would be subject to attack and blockade, while the other canal would be under an international guarantee of neutrality. If our canal were blockaded or destroyed, the warships of our enemy would have free access to the Pacific, while we should be barred.

(9.) It would insure free passage for our merchant vessels in time of war, if private property should ever be exempted from seizure; and under existing rules of international law it would insure the free passage of our goods in neutral bottoms.

(10.) It would insure free passage of our warships even in time of war.

(11.) It would save us from the temptation to absorb the Central American States as a means of protecting the canal. If we adopt the policy of treating the canal as an instrument of war and subject to attack, there is certain to arise a popular demand for the seizure of the entire isthmus, whenever a plausible justification may arise. Sooner or later, we should occupy the isthmus, just as England occupied Egypt for the protection of the Suez Canal. The absorption of Mexico would follow inevitably. The jingoes of the day would cry: "On to the canal! Make the canal a part of our coast line!" The military danger of a neutralized canal seems trivial, indeed, when contrasted with the grave political danger of incorporating in our body politic the unassimilable millions of Mexico and Central America, aliens in race, language, social ideals and political training.

(12.) It would strengthen the friendly relations between this country and her sister republics to the south. To the people of Central America a fortified canal would be a symbol of American aggressiveness. It would provoke distrust and enmity where it should be our studied policy to win confidence and friendliness.

(13.) It would make for peace and civilization and constitute

a leading precedent, making it forever difficult for other nations to pursue a narrow or exclusive policy in connection with future inter-oceanic canals. It would do much to save us from the burdens and dangers of militarism, and be a splendid rebuke to the narrow Chauvinism of the day.

The chief objection to a neutralized canal lies in the possibility that it might be used by a hostile fleet. It is urged that it is unreasonable to expect our government to assume the immense financial burden of constructing the canal, and then, when it is completed, to turn it over to our enemies as an instrument for attacking our Pacific possessions. The answer to this is that the danger is more apparent than real, and that it is a small price to pay for the manifold advantages of neutralization. It is scarcely conceivable that a European Power would send a fleet across the Atlantic to attack our Pacific possessions, where it would have to fight remote from its coal supply. There are no European coaling stations in the Pacific anywhere near the western terminus of the canal, and it is our fixed policy that none shall be acquired. This is a cardinal fact in the situation, and it renders the danger of a neutralized canal so insignificant that it should not be permitted to determine our policy. Again, with our naval bases at Honolulu, San Francisco, San Diego, Porto Rico, Isle of Pines, Key West, Pensacola and the Mississippi, and with our shorter lines of communication, a European navy would be at a serious disadvantage in any conflict near the canal. If we could not vanquish an enemy under such conditions, we may be sure that fortifications would not save the canal. If we were stronger than our enemy, we could protect the canal without fortifications; if weaker, the canal would be blockaded in spite of the fortifications. Finally, the pending treaty recognizes and confirms our exclusive right to police and manage the canal. Practically, this constitutes an absolute bar to the passage of the warships of our enemies. The fear of modern explosives directed by irresponsible parties would close the canal to belligerent vessels quite as effectively as fortifications. Then, too, it would be so easy for an inexplicable "accident" to happen to the canal that no commander would risk being bottled up.

The pending treaty provides for a neutral zone of only three marine miles at each end of the canal. There is no reason why we should follow the Constantinople treaty in this regard. The

reasons for limitations of that treaty have been stated, and they have no application to our canal. In the Clayton-Bulwer treaty the extent of the neutral zone was left to future negotiation. Accordingly, on April 30th, 1852, Mr. Webster, Secretary of State, and Mr. Crampton, the British Minister to the United States, agreed that the neutral zone should "extend to all waters within the distance of twenty-five nautical miles from the termination of said canal on the Pacific and Atlantic coasts." In the face of this precedent the British government could not object to an amendment of the pending treaty in this particular.

The Committee on Foreign Relations have recommended to the Senate the following amendment:

"Insert, at the end of section 5, of Article II., the following: 'It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4 and 5 of this article shall apply to measures which the United States may find it necessary to take for securing, by its own forces, the defence of the United States and the maintenance of public order.' "

This language is disingenuously vague. The real object of the amendment is to reserve to the United States the right to close the canal to the warships of its enemies. The Committee have adopted the language of the corresponding reservation found in Article X. of the treaty of Constantinople, but they have rejected Article XI. of that treaty, which provides that any measures that Egypt or Turkey may take in self-defense shall not interfere with the free use of the canal by neutrals, nor include the erection of permanent fortifications which would dominate the canal. In thus adopting the language contained in Article X. of the treaty of Constantinople, without the important qualification thereof contained in Article XI., the Committee have formulated a reservation so vague and general that it cannot be accepted, even by those who might be willing to concede to the United States the right to exclude the warships of its enemies. The Committee contend that "the situation of the United States on both oceans renders this amendment necessary." The similar situation of Canada on both oceans would compel England to reject the amendment. The British government, which is no less dependent upon public opinion than our own, has already in the pending treaty conceded all that it dared. Loyalty to Canada and her other Pacific possessions compels England to insist that the canal shall always be open to her warships. We cannot expect to secure

the advantages of neutralization without the correlative disadvantages.

An act of neutralization may be either negative or affirmative in its nature. In other words, the parties to the agreement may simply agree not to exercise their belligerent rights toward the object neutralized, or they may, in addition, agree to guarantee the neutrality of such object. Obviously, the latter mode of neutralization is far more effective than the former. It creates a sanction, and furnishes a strong incentive in the obligation of each party to intervene actively for the protection of the object neutralized. The Clayton-Bulwer treaty provides for this affirmative form of neutralization, and the same is true of the treaty of 1846 between the United States and Colombia, and of the treaty of 1867 between the United States and Nicaragua. On the other hand, the Hay-Pauncefote treaty is purely negative in its obligations. In effect, the two Powers merely agree to refrain from exercising their belligerent rights toward the canal; they do not agree to prevent the exercise of such rights by others. The pending treaty adopts, in substance, the language of the Constantinople treaty, and it is perfectly well understood that that treaty does not create a joint guarantee. If France should attempt to blockade our canal, England would not be bound by the treaty to assist us in preventing it. Doubtless, she would be willing to do so, under ordinary circumstances, for the protection of her own commerce, but it would not be a matter of treaty obligation. If, under the treaty, England is a guarantor of the neutrality of the canal, she may at any time land troops at the isthmus and take such measures as she may deem expedient for the protection of the canal, without reference to our wishes in the premises. It ought to be settled by unequivocal treaty stipulation that the protection of the canal rests primarily with the United States. It may be that Secretary Hay thought it wise to leave the question of enforcement to be determined when the necessity for action arises. It is far more likely that he wished to avoid opposition to the treaty arising from popular sensitiveness as to the Monroe doctrine. The idea that an international guarantee of the neutrality of the canal would be an infraction of that doctrine is so prevalent in this country that it could not be safely ignored in drafting the treaty. Just now the Monroe doctrine is sacrosanct, and the fervor of its worshippers is directly proportioned to their

ignorance of its true meaning. The genuine Monroe doctrine takes its rise and finds its limitations in the necessity for self-defense. It is wholly self-regarding. All European activity in this hemisphere is not inhibited, but only such as is dangerous to our peace and safety. An international agreement, guaranteeing the neutrality of the canal, would be an application rather than an infraction of the Monroe doctrine, provided it did not involve a permanent European occupation and police. The Senate may consider it advisable to amend the treaty by adding a stipulation reserving to the United States the primacy in any measures that may be necessary to preserve the neutrality of the canal, and pledging the other signatories to coöperate with their naval and military forces whenever requested by the United States. Such a stipulation would recognize our rightful hegemony in the affairs of this hemisphere, confirm our control of the canal, avoid the occupation of the isthmus by European soldiers without our consent, and at the same time add a needed sanction to the convention.

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